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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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7 THOMAS H. TOY, et al.,  
8 Plaintiffs,  
9 v.  
10 HONEYWELL INTERNATIONAL INC.,  
et al.,  
11 Defendants.

Case No. [19-cv-00325-HSG](#)

**ORDER DENYING MOTION TO  
DISMISS**

Re: Dkt. No. 47

12  
13 Plaintiffs Thomas H. Toy, Sr. and Agnes Toy initially filed this asbestos lawsuit in  
14 Alameda County Superior Court on December 14, 2018, naming 45 Defendants. *See* Dkt. No. 1-1  
15 (state court complaint). Three Defendants removed the case to this Court, where it was later  
16 consolidated into one action. *See* Dkt. No. 153.

17 On February 6, 2019, Defendant Western Auto Supply Company (“WASC”) moved, under  
18 Federal Rule of Civil Procedure 12(b)(2), to dismiss the complaint against it for lack of personal  
19 jurisdiction. *See* Dkt. No. 47 (“Mot.”). After WASC moved to dismiss, Plaintiffs filed a first  
20 amended complaint in this Court on February 11, naming 43 Defendants. *See* Dkt. No. 76  
21 (“FAC”). Plaintiffs responded to WASC’s motion on February 20, in an opposition that relied on  
22 the FAC. *See* Dkt. No. 91 (“Opp.”). WASC replied on February 27, also relying on allegations in  
23 the FAC. *See* Dkt. No. 114 (“Reply”).<sup>1</sup> For the following reasons, the Court **DENIES** the motion  
24 to dismiss the complaint against WASC for lack of personal jurisdiction.<sup>2</sup>

25  
26 <sup>1</sup> Though WASC moved to dismiss before Plaintiffs filed their first amended complaint, the Court  
will consider the motion as it applies to Plaintiffs’ allegations in the FAC, as Plaintiffs did in their  
Opposition and WASC in its Reply.

27  
28 <sup>2</sup> The Court finds this matter appropriate for disposition without oral argument and the matter is  
deemed submitted. *See* Civil L.R. 7-1(b).

1                   **I. BACKGROUND**

2                   **A. Plaintiffs' Allegations**

3                   Thomas H. Toy, Sr. "was exposed to asbestos during the course of his life," which led to  
4                   him developing malignant mesothelioma. *See* FAC ¶¶ 5–6. Mr. Toy identifies the following  
5                   sources of asbestos exposure throughout his lifetime:

- 6                   • 1953 to 1962: service in the United States Army. *Id.* ¶ 5. Mr. Toy worked as a  
7                   "wheel mechanic . . . while stationed in Germany where he worked on all types of  
8                   vehicles performing maintenance and repairs including brakes and clutches." *Id.*  
9                   He also "worked on the wire team" in Korea and the United States, in which his  
10                   "team would lay telephone wire and cables for telephone communications." *Id.*
- 11                   • 1962 to 1990: federal civil service employee in California. *Id.*
  - 12                   ○ 1962 to 1974: Mr. Toy "worked as a marine machinist aboard ships,  
13                   submarines and air craft carriers performing activities in ship building  
14                   and/or ship repair at several locations including but not limited to Hunters  
15                   Point Naval Shipyard and Mare Island Naval Shipyard." *Id.*
  - 16                   ○ 1974 to 1980: Mr. Toy "worked as a maintenance machinist performing  
17                   activities in building operation, maintenance and repair to HVAC, pumps,  
18                   valves, condensate in the mechanical room and other equipment at Treasure  
19                   Island Naval Shipyard." *Id.*
  - 20                   ○ 1980 to 1990: Mr. Toy "worked as a planner/estimator performing activities  
21                   of buying materials for projects and visiting on-site locations including but  
22                   not limited to: Hamilton Air Force Base, Alameda Naval Air Station and the  
23                   Naval Hospital in Oak Knoll while working at the Navy Public Works  
24                   Center in San Francisco." *Id.*
- 25                   • 1960s to 1990s: Mr. Toy "worked in non-occupational capacities performing home  
26                   construction, repairs and remodeling involving asbestos-containing products,"  
27                   including while "building, repairing and remodeling his own homes." *Id.* During  
28                   this period, Mr. Toy also "worked in non-occupational capacities performing

vehicle maintenance and repairs involving asbestos-containing products, including brakes, clutches, and gaskets" on "his own and on his family's vehicles." *Id.*

In the FAC, Plaintiffs identify 43 Defendants whose products (or those of their predecessors) allegedly contained asbestos. *See id.* ¶ 6. Plaintiffs allege that Defendants “were and are authorized to do and are doing business in the State of California” and “have regularly conducted business” in Alameda County, California. *Id.* ¶ 9. Plaintiffs specifically allege that WASC was “a supplier of asbestos-containing automotive parts.” *Id.* ¶ 6.

## II. LEGAL STANDARD

Due process limits a court’s power to “render a valid personal judgment against a nonresident defendant.” *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980). Where a state authorizes “jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States,” as does California, *see Cal. Civ. Proc. Code § 410.10*, federal courts must determine whether the exercise of jurisdiction over a defendant “comports with the limits imposed by federal due process.” *Daimler AG v. Bauman*, 571 U.S. 117, 126 (2014); *see also Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (“California’s long-arm statute . . . is coextensive with federal due process requirements, so the jurisdictional analyses under state law and federal due process are the same.”). “For a court to exercise personal jurisdiction over a nonresident defendant consistent with due process, that defendant must have certain minimum contacts with the relevant forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Id.* (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)) (internal quotation marks omitted); *see also Walden v. Fiore*, 571 U.S. 277, 286 (2014) (“Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the random, fortuitous, or attenuated contacts he makes by interacting with other persons affiliated with the State.”) (internal quotations omitted).

A plaintiff may invoke either general or specific personal jurisdiction. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). “[G]eneral jurisdiction requires affiliations so continuous and systematic as to render the foreign corporation essentially at home in the forum State, *i.e.*,

1 comparable to a domestic enterprise in that State.” *Daimler*, 571 U.S. at 133 n.11 (internal  
2 quotations, citations, and alterations omitted). Specific jurisdiction exists if: (1) the defendant has  
3 performed some act or consummated some transaction with the forum by which it purposefully  
4 availed itself of the privilege of conducting business in California; (2) the plaintiff’s claims arise  
5 out of or result from the defendant’s forum-related activities; and (3) the exercise of jurisdiction is  
6 reasonable. *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002) (citing  
7 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475–76 (1985)).

8 “When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff bears  
9 the burden of demonstrating that the court has jurisdiction over the defendant.” *Pebble Beach Co.*  
10 *v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). Although the court “may not assume the truth of  
11 allegations in a pleading which are contradicted by affidavit,” *CollegeSource, Inc. v.*  
12 *AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011) (internal quotation marks omitted), the  
13 court must resolve any conflicts between the facts contained in the parties’ affidavits in the  
14 plaintiff’s favor. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir.  
15 2004). When the court does not conduct an evidentiary hearing, the plaintiff need only make a  
16 prima facie showing of facts supporting personal jurisdiction to avoid dismissal. *See Myers v.*  
17 *Bennett Law Offices*, 238 F.3d 1068, 1071 (9th Cir. 2001).

### 18 III. DISCUSSION

19 WASC is a Delaware corporation with its headquarters in Roanoke, Virginia. *See Mot.*  
20 Exs A, B. Thus, as the parties agree, the Court does not have general jurisdiction over WASC.  
21 *See Opp.* at 4–5, *Reply* at 9.

22 However, Plaintiffs contend that the Court has specific personal jurisdiction over WASC  
23 under the “stream of commerce plus” theory. *See Opp.* at 8 (citing *J. McIntyre Mach., Ltd. v.*  
24 *Nicastro*, 564 U.S. 873 (2011)). Plaintiffs explain their theory as follows:

25 Plaintiffs have alleged that Western Auto supplied a known hazardous  
26 product in California and that Mr. Toy was injured by exposure to that  
27 product in this State. Plaintiffs’ claims arise out of Western Auto’s  
28 purposeful efforts to directly serve the market for asbestos-containing  
products in this State. Western Auto’s supply of asbestos-containing  
products in California provides sufficient basis for this Court to  
exercise personal jurisdiction over Western Auto. Such continuing

1 sales into California certainly satisfy the long-arm statute, as well as  
2 due process. Western Auto's product sales in California are sufficient  
3 to establish purposeful availment of the benefits and protections of  
4 California law.

5 Opp. at 8. WASC responds that "Plaintiffs have come forward with no competent or credible  
6 evidence that" Mr. Toy's "alleged exposure to asbestos arose from any conduct by WASC in  
7 California" and have not identified "any WASC-supplied products which exposed Mr. Toy to  
8 asbestos at any location." Reply at 2.

9 Taking the uncontested allegations in the complaint as true, as the Court must do at this  
10 stage, *see Schwarzenegger*, 374 F.3d at 800, Plaintiffs have met their burden to establish a *prima*  
11 *facie* showing of facts supporting the exercise of personal jurisdiction. First, Plaintiffs have  
12 satisfied the purposeful availment element by alleging that WASC supplied products containing  
13 asbestos in California, thereby availing itself to the benefits and protections of California law. *See*  
14 FAC ¶¶ 6, 9. Second, Plaintiffs have satisfied the nexus element by alleging that Mr. Toy was  
15 exposed to asbestos based on his use of WASC's products in California. *See* FAC ¶ 5. Third,  
16 taking Plaintiffs' allegations as true, the exercise of jurisdiction over WASC in California would  
17 be reasonable because California has an interest in protecting its citizens from hazardous products  
18 and WASC has economically benefitted from its activities in California. *See, e.g., Varney v. Air*  
19 *& Liquid Sys. Corp.*, No. 3:18-CV-05105-RJB, 2018 WL 1517669, at \*3 (W.D. Wash. Mar. 28,  
2018).

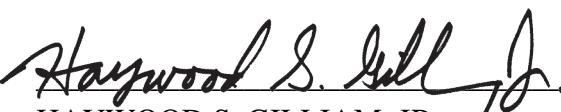
21 Because WASC has not produced any evidence to refute the allegations in Plaintiffs'  
22 complaint, which the Court must accept as true at this stage, the Court finds that Plaintiffs have  
23 made the required *prima facie* showing of facts supporting personal jurisdiction to avoid dismissal.

24 **IV. CONCLUSION**

25 For the foregoing reasons, the Court **DENIES** WASC's motion to dismiss for lack of  
26 personal jurisdiction.

27 **IT IS SO ORDERED.**

28 Dated: 4/29/2019

  
HAYWOOD S. GILLIAM, JR.  
United States District Judge